

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544**

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In the Matter of)	
)	
Implementation of the Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use of Customer)	CC Docket No. 96-115
Proprietary Network Information and Other)	
Customer Information)	
)	
Implementation of the Non-Accounting)	CC Docket No. <u>96-149</u>
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as Amended)	

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.**

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel, hereby submits its Reply Comments to the Federal Communications Commission's ("Commission") *Further Notice of Proposed Rulemaking* in this docket.¹ In these Reply Comments, Intermedia refutes incumbent local exchange carrier ("ILEC") assertions that ILECs adequately safeguard carrier CPNI, and Intermedia also reiterates its call for Commission rules to require that ILECs create firewalls to separate presubscription, retail, and wholesale CPNI.

1. ILECs have unmatched access to the CPNI of all customers, which creates unmatched potential for abuse

Each ILEC possesses CPNI of essentially every single customer in the ILEC's service territory. Through maintaining presubscription databases, ILECs have a rich source of

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Further Notice of Proposed Rulemaking, FCC 98-27 (rel. Feb. 26, 1998) ("*FNRPM*").

interexchange CPNI. Through virtual monopoly control of retail markets, ILECs possess expansive databases of local exchange CPNI. Through monopoly of bottleneck facilities, such as loops, ILECs have access to a vast array of CPNI on the customers that ILECs have lost to retail competition. In short, ILECs possess unequalled databases of CPNI, including competitor CPNI.

BellSouth argues against ILEC-specific CPNI protections, stating that the Commission should issue no “one-way obligations.”² BellSouth fails to recognize, however, that ILECs possess CPNI that is different in kind from that of competitors and that ILECs have unique opportunities to abuse CPNI, which the Commission has recognized. “[A] presubscription change may lead [an ILEC] to engage in conduct that blurs the distinction between its role as executing carrier and its objectives as a market competitor.”³ “Incumbent LECs could use CPNI anticompetitively.”⁴ While CPNI burdens may “fall heavier on some carriers than on others,”⁵ this is necessary because ILECs maintain CPNI that is much more competitively valuable than the CPNI maintained by other carriers.

Moreover, the record indicates that, in spite of Bell Atlantic’s claims,⁶ ILECs have abused competitor CPNI in the past, and competitive local exchange carrier (“CLEC”)

² BellSouth at 6.

³ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, 12 FCC Rcd 10674, 10684, Further Notice of Proposed Rulemaking and Memorandum and Opinion Order on Reconsideration (1997).

⁴ *FNRPM* at ¶ 59.

⁵ GTE at 5.

⁶ Bell Atlantic at 3 (“there is not one documented instance in the record of misuse of carrier CPNI, even before enactment of the 1996 Act”).

experience suggests that ILECs use CPNI to winback customers. "Sprint, AT&T and MCI are suing ... Pacific Bell ... for misuse of [CPNI] supplied under billing and collection agreements."⁷ The ILEC winback campaigns that CLECs contend with daily are no surprise as "abuse of carrier confidential data tends to increase proportionately with the market share of the network service provider."⁸ So long as ILECs maintain presubscription, retail, and wholesale CPNI databases – roles that create a conflict of interest – Commission rules will be needed to protect against ILEC CPNI abuse.

2. ILECs offer carriers no meaningful guarantee of CPNI protection

The ILECs, as demonstrated by their comments, offer carriers no credible CPNI protection. USTA suggests that damage to an ILEC's "reputation and the legal and business consequences associated with such a breach of trust" gives an ILEC "substantial incentives to protect" carrier CPNI.⁹ GTE states that carriers "can be expected to be vigilant in protecting their rights through contract terms or complaints or other legal measures."¹⁰ Both of these assertions are predicated on the existence of a competitive market, which does not exist in the world of CPNI.

Competitors have no choice but to use ILECs to execute presubscription changes, and, likewise, competitors have no choice but to purchase access to bottleneck facilities from ILECs. Competitors simply can't take their business elsewhere, as would be the case in a

⁷ Sprint at 8, note 3.

⁸ Telecommunications Resellers Association at 5.

⁹ United States Telephone Association at 5 ("USTA").

¹⁰ GTE at 5.

traditional contract relationship, and thus, ILECs will suffer no competitive harm – and actually stand to benefit greatly – from misusing competitor CPNI. Competitors have nowhere to go but the ILECs, and the ILECs know it.

Additionally, ILECs don't seem to understand that they can't use competitor's CPNI to win, or winback, customers. For example, U S WEST states that there is nothing "inappropriate about a network provider knowing that customers that are not theirs are customers of other carriers" and that there is nothing "inappropriate with a network provider contacting potential or new customers."¹¹ Knowing affirmatively, with CPNI, which customers are not yours, and then contacting these "potential or new customers" immediately following their switch to competitive carriers is precisely the type of danger the Commission should guard against.

3. The Commission should adopt bright-line rules to protect competitor CPNI from ILEC abuse

The combination of the ILECs' unique access to competitor CPNI, unique potential for CPNI abuse, and complete lack of meaningful CPNI protection, argues in favor of the Commission issuing rules to state expressly what ILECs may and may not do with the array of competitor CPNI that ILECs have within their control. As MCI notes, "most carriers seem reasonably willing to protect other carriers' proprietary information, once they know what the rules are and exactly what is covered."¹² The Commission should issue straightforward safeguards and enforcement mechanisms to make clear to the ILECs exactly what the rules are.

¹¹ U S WEST at 12.

¹² MCI at 16.

As for safeguards, the Commission should mandate that ILECs maintain a bright-line separation between ILEC presubscription operations, retail operations, and wholesale operations. The ILECs presently maintain separate systems, and the Commission should see to it that the ILECs continue to maintain separate systems. This firewall approach should include a proscription against transferring data among systems and among the account representatives that maintain the different systems. As for enforcement, the Commission should treat ILEC winback campaigns that misuse CPNI similar to interexchange carrier slamming, and issue notices of apparent liability and per-violation fines if a carrier can establish that misappropriated CPNI has been used in an effort to winback customers.

4. Conclusion

For the foregoing reasons, Intermedia submits that the Commission should issue rules requiring that ILECs maintain firewalls that separate presubscription, retail, and wholesale CPNI and enforcement mechanisms to ensure ILEC compliance.

Respectfully submitted,

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April 14, 1998.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 14 day of April, 1998, served this day a copy of the foregoing REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC. by hand delivery to the following:

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